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Attorneys for Defendant Winnebago Industries, Inc.

FILED FEB 11 14 24 USDC ORF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**FLOYD CARR, and CONNIE CARR,**

Plaintiffs,

v.

**WINNEBAGO INDUSTRIES, INC.,** a  
corporation, and **LA MESA RV CENTER,**  
INC., a corporation,

Defendants.

**CV 09-165-AC**

**NOTICE OF REMOVAL**

Tillamook County Circuit Court  
Case No. 02-2000

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that, pursuant to 28 USC §§ 1441 and 1446, Defendant Winnebago Industries, Inc. ("Winnebago") hereby removes to this Court the case now pending in Tillamook County Circuit Court as *Floyd and Connie Carr vs. Winnebago Industries, Inc. and La Mesa RV Center, Inc.*, Case No. 09-2000.

As grounds for removal, Winnebago states as follows:

NOTICE OF REMOVAL IS TIMELY

1. On January 6, 2009, Plaintiffs filed a complaint now pending in Circuit Court of the State of Oregon for Tillamook County entitled *Floyd and Connie Carr vs. Winnebago Industries, Inc. and La Mesa RV Center, Inc.*, Case No. 09-2000. An OJIN printout of the state court case registry is attached as Exhibit 1. Pursuant to 28 USC § 1446(a), all state court papers served on Winnebago at the time of removal, consisting of the Summons and Complaint, are attached hereto as Exhibit 2.

2. The Notice of Removal is timely filed under 28 USC § 1446(b), which provides that a notice of removal must be filed within 30 days after a defendant receives, by service or otherwise, the initial pleading. Winnebago first received a copy of the Summons and Complaint when it was served on January 26, 2009.

3. No further proceedings have been had in the Circuit Court of Tillamook County, Oregon, as of the date of this removal.

4. According to the records of the Tillamook County Circuit Court, Defendant La Mesa RV Center, Inc. was not served as of the date this Notice of Removal is being filed.

DIVERSITY JURISDICTION EXISTS

5. This is a civil action over which this Court has original jurisdiction pursuant to 28 USC § 1332. This action may be removed pursuant to 28 USC § 1441(b) because the action involves a controversy between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Winnebago is and was at all times a corporation organized under the laws of the State of Iowa with its principal place of business in Iowa, and as such is a citizen of the State of Iowa.

7. Defendant La Mesa RV Center, Inc. is and was at all times a corporation organized under the laws of the State of California, with its principal place of business in California, and as such is a citizen of the State of California.

8. Plaintiffs are and were at all times citizens of the State of Oregon.

9. Plaintiffs allege money damages of \$83,080.21 exclusive of interest and costs.

REMOVAL TO THIS DISTRICT IS PROPER

10. Pursuant to 28 USC §§ 1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

11. Pursuant to 28 USC § 1441(a), removal is made to this Court as the district embracing the place where the state court action is pending.

12. Winnebago is providing to the Plaintiffs, through their counsel, written notice of the filing of this Notice of Removal. Furthermore, Winnebago is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Tillamook County, Oregon, where the action is currently pending.

Dated this 11th day of February, 2009.

**MCEWEN GISVOLD LLP**

By

  
**BARRY L. GROCE**

OSB No. 802477

(503) 226-7321

**Attorney for Defendant Winnebago Industries, Inc.**



## Oregon Courts Real-time (OJIN) Report

Please Note: Do not use the Browser's Back Button.

Court Type: CIRCUIT  
Business Name: WINNEBAGO  
Court Location: TIL  
Case #: 092000

Date/Time Searched: 02/11/2009 02:31 PM

### CASE DETAILS

Display Remote Case Tillamook Co Circuit Court Status Open ACTV  
Case#..... 092000 Carr Floyd/Winnebago Industries  
Civil Negligence

Case Filed Date..... 1/06/09 Starting Instrument.. Complaint  
At Issue Date..... Origin..... Original filing  
First Setting Date.. Previous Court.....  
Trial Scheduled Date Previous Court Case#.  
Trial Start Date.... Master Case Number...  
Length of Trial..... Relation to Master...  
Disposition Date.... Amount Prayed For.... \$.00  
Final Order Date.... Termination Stage....  
Reinstated Date..... Termination Type.....  
  
Judgment Type.....  
Judgment Status.....  
Judgment Volume/Page.

ROLE	PLAINTIFF	ATTORNEY
1 Plaintiff	Carr Floyd	Marquoit Jason
2 Plaintiff	Carr Connie	Marquoit Jason

ROLE	DEFENDANT	ATTORNEY
1 Defendant	Winnebago Industries	Winnebago Industries
2 Defendant	La Mesa Rv Center	La Mesa Rv Center

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
1	1/06/09	1/06/09 Complaint			
		STRICT PRODUCT LIABILITY			
2	1/06/09	1/06/09 Miscellaneous Scheduled	3/06/09		CVL
		REVIEW			
3	2/05/09	2/05/09 Complaint Amended			
		PTF 1 Carr Floyd			
		***** END OF DATA *****			

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EXHIBIT  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF TILLAMOOK

FLOYD and CONNIE CARR,

Plaintiffs,

vs.

WINNEBAGO INDUSTRIES, INC., a  
corporation, and LA MESA RV CENTER,  
INC., a corporation,

Defendants..

) Case No. 09-2000

) SUMMONS

To: Winnebago Industries, Inc.  
c/o Raymond M. Beebe (registered agent)  
605 W. Crystal Lake Rd.  
Forest City, IA 50436

Defendant

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney, or if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

[Signature of Attorney/Author for Plaintiff]

J. Jason Marquait, OSB No. 99318

LAW OFFICE OF J. JASON MARQUAIT

7830 SW 40<sup>th</sup> Ave., Suite 8

Portland, OR 97219

(503) 245-0110

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

Attorney of Record for Plaintiff(s)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Attorney of Record for Plaintiff(s)

EXHIBIT

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COPY  
JUL 11 - 2009  
10:46  
CLERK OF COURT

**COPY**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF TILLAMOOK

FLOYD and CONNIE CARR, ) Case No. 09-2000  
Plaintiffs, )  
vs. ) COMPLAINT (Strict Product Liability;  
WINNEBAGO INDUSTRIES, INC., a ) Negligence; Breach of Contract)  
corporation, and LA MESA RV CENTER, )  
INC., a corporation, ) Not Subject to Mandatory Arbitration  
Defendants. )

COMES NOW the plaintiff and alleges:

FOR A FIRST CLAIM FOR RELIEF (Strict Product Liability):

1.

Plaintiffs are individuals residing in Tillamook County, Oregon. Defendants are corporations.

2.

All material acts and omissions alleged herein occurred within Tillamook County, Oregon.

3.

Defendant Winnebago manufactured and placed into the stream of commerce, a 2007 Itasca motor home, VIN number 1FDXE45S06DA95562, hereinafter referred-to as "the motor home."

Page 1 - COMPLAINT (Strict Product Liability; Negligence; Breach of Contract)

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Portland, OR 97219  
Ph. (503) 245-0110

EXHIBIT 2  
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1 The motor home was sold to plaintiffs by defendant LaMesa R.V. Center, Inc. at Tucson, AZ.

2 4.

3 At all times material herein, the motor home was being used in its intended manner according to  
4 its manufacturer's specifications, and if not, was at all times being used in a reasonably  
5 foreseeable manner.

6 5.

7 The motor home was expected to, and did reach the plaintiffs without substantial change in  
8 condition from the time it was manufactured and placed into the stream of commerce by  
9 defendants, and remained substantially unchanged until the date of the malfunction described  
10 herein. The motor home was manufactured and distributed in an unreasonably dangerous  
11 condition, as hereinafter described.

12 6.

13 The motor home was in an unreasonably dangerous condition due to a manufacturing and/or  
14 design defect. On or about October 11, 2007, the motor home malfunctioned, resulting in a fire  
15 that spread throughout plaintiffs' property.

16 7.

17 The fire was directly and proximately caused by the unreasonably dangerous condition of the  
18 defendants' product.

19 8.

20 The fire caused damage to plaintiffs' personal property located within the motor home, and  
21 destroyed the motor home, all to their total damage of \$83,080.21.

22 9.

23 Pursuant to ORS 30.900, et. seq., defendants are strictly liable for manufacturing and distributing  
24 the motor home in an unreasonably dangerous condition.

25 ///

26 Page 2 - COMPLAINT (Strict Product Liability; Negligence; Breach of Contract)

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1 FOR A SECOND CLAIM FOR RELIEF (Negligence):

2 10.

3 Plaintiffs reallege and incorporate by this reference paragraphs 1-9, above, as though explicitly  
4 set forth herein.

5 11.

6 The manufacturing and distribution of the motor home in its unreasonably dangerous condition  
7 was caused by the negligence of the defendants in one or more of the following particulars:

8 (A) In failing to adequately design, manufacture, engineer, and/or test the design of the motor  
9 home to discover any potentially unreasonably dangerous design and/or manufacturing defects,  
10 in order to ensure that it was not unreasonably dangerous;

11 (B) In failing to warn purchasers of the risk of fire inherent in the motor home;

12 (C) In one or more particulars to be disclosed by the discovery process.

13 FOR A THIRD CLAIM FOR RELIEF (Breach of Contract/Breach of Warranty):

14 12.

15 Plaintiff realleges and incorporates by this reference paragraphs 1-9, above, as though explicitly  
16 set forth herein.

17 13.

18 Plaintiffs bargained-for, and defendants expressly and implicitly promised to provide a  
19 merchantable vehicle, which was also fit for the particular purposes to which the plaintiffs  
20 intended to put the vehicle.

21 14.

22 Defendants failed to provide a merchantable motor home, or a motor home that was fit for the  
23 particular purposes to which the plaintiffs intended it to be put. Said failure constituted a  
24 material breach of the defendant's obligations under the parties' contract, and a material breach  
25 of the express and implied warranties given by the defendants, damaging the plaintiffs in the

26 Page 3 - COMPLAINT (Strict Product Liability; Negligence; Breach of Contract)

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1 amount set forth above.

2 15.

3 Plaintiffs have performed each and every condition precedent to their right to recover, and every  
4 condition precedent to defendants' obligation to perform has occurred.

5  
6 WHEREFORE, the plaintiffs respectfully request that this Court enter a judgment against  
7 defendant ON EACH CLAIM FOR RELIEF:

- 8 (1) Awarding plaintiffs \$83,080.21;  
9 (2) Awarding plaintiffs their costs and disbursements incurred herein; and  
10 (3) For such other relief as the Court deems just and equitable.

11  
12 DATED: January 5, 2009.

13  
14  
15 J. Jason Marquait, OSB# 99318  
16 Attorney for Plaintiff  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 Page 4 - COMPLAINT (Strict Product Liability; Negligence; Breach of Contract)

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***CERTIFICATE OF SERVICE***

I hereby certify that on the 11<sup>th</sup> day of February, 2009, I served the within  
NOTICE OF REMOVAL on the parties listed below by the methods indicated below on said  
day.

J. Jason Marquoit, Esq.  
Law Office of J. Jason Marquoit  
7830 SW 40th Avenue, Suite 8  
Portland, Oregon 97219  
Facsimile: 503-245-0770  
Attorney for Plaintiffs

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Electronic Service from Court

**McEWEN GISVOLD LLP**

By

  
**BARRY L. GROCE**

OSB No. 802477

(503) 226-7321

**Attorney for Defendant Winnebago Industries, Inc.**

CERTIFICATE OF SERVICE

06050-002\Notice of Removal.doc